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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/764,739

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Michael P. Connelly

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12/29/2008

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EXAMINER

LEIVA, FRANK M

ART UNIT

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3714

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/764,739	<b>Applicant(s)</b> CONNELLY, MICHAEL P.	
	<b>Examiner</b> FRANK M. LEIVA	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/29/2008</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Acknowledgements***

1. The examiner acknowledges amendments to claims 1, 19 and 37 applicant's submission filed 29 July 2008.

### ***Claim Rejections - 35 USC § 112 1<sup>st</sup> Paragraph***

2. Claims 1-3, 19-21 and 37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Missing in the specification is any mention of different instruments. Please amend the specifications as to include the instruments without adding new matter not presented in the original disclosure.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-37; have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. **Claims 1-37 are rejected under 35 U.S.C. 102(a) as being anticipated by Hecht et al (US 2003/0073489 A1).**
6. **Regarding claims 1, 19 and 37;** Hecht discloses a computerized gaming system, comprising: a gaming module, comprising a processor and gaming code which

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is operable when executed on the processor to conduct a wagering game on which monetary value can be wagered, (§ [0004]); and an audio module, the audio module operable to play an audio track, the audio track comprising a plurality of selected audio element tracks that are played at the same time to create the played audio track, (§ [0005]), wherein the selected audio element tracks comprise two or more instruments played in the same key in synchronization and are selected by the wagering game machine based on at least one of random selection and a randomly ordered list, (§ [0009, 0043]), where the sound change Random access memory is considered to be a randomly ordered list, and (§ [0050]) shows that multiple instruments are played and that the music is played synchronized and same key.

**7. Regarding claims 2 and 20;** Hecht discloses wherein each audio element track comprises one or more instruments not present in the other audio element tracks, (§ [0005-0007]), wherein the system can make changes to the track by changing instruments or swapping voice from different singers means that the system sound files include instrument sound separate from voice sounds.

**8. Regarding claims 3 and 21;** Hecht discloses wherein at least one audio element track comprising one or more specific instruments comprises multiple phrases independently selectable for playback to create the played audio track, (§ [0005]), where the changes include skipping to different section of the song, meaning that the songs are made of partitions or sections (phrases in the song).

**9. Regarding claims 4 and 22;** Hecht discloses wherein the multiple phrases are played back out of sequence to create the played audio track, (§ [0043]), wherein if they are played randomly, they are out of sequence.

**10. Regarding claims 5 and 23;** Hecht discloses wherein the phrase sequence played back to create the played audio track comprises a randomly selected phrase order, (§ [0043]), wherein if they are played randomly.

**11. Regarding claims 6 and 24;** Hecht discloses wherein the phrase sequence played back to create the played audio track is provided by an ordered list of phrases, (¶ [0005 and 0043]), wherein the sound change random access memory is considered to be a list of audio track to be played.

**12. Regarding claims 7 and 25;** Hecht discloses wherein the phrase sequence played back to create the played audio track comprises a phrase sequence selected based on priority weighting assigned to the phrases, (¶ [0038]), including primary sound files which are used to start the sound or give background to the played track.

**13. Regarding claims 8 and 26;** Hecht discloses wherein two or more audio element tracks are randomly combined to create the played audio track, (¶ [0052]), whereas the tracks are played simultaneously and on-beat with the initial recording.

**14. Regarding claims 9 and 27;** Hecht discloses, wherein two or more audio element tracks are combined according to a predetermined list of audio element track combinations, (¶ [0052]), whereas the tracks are played simultaneously and on-beat with the initial recording, these audio elements taken from the sound change random access memory list.

**15. Regarding claims 10 and 28;** Hecht discloses wherein two or more audio element tracks are selected and combined to produce the played audio track, the selection comprising evaluation of priority weighting of the various audio element tracks, (¶ [0008 and 0038]), where there are specific instructions to follow priorities according to game changes and primary sounds.

**16. Regarding claims 11 and 29;** Hecht discloses wherein the audio element tracks are played back repeatedly, and wherein the length of at least two of the audio element

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tracks are of different length, (¶ [0042]), wherein if the CPU determines the duration of play, means that audio elements are not limited to be of the same duration.

**17. Regarding claims 12 and 30;** Hecht discloses wherein the played audio track further comprises a portion that is not a combination of audio element tracks, (¶ [0038]), where the primary sound files appear to be plain files to be changed and combined, but for the start comprise a portion that not yet altered.

**18. Regarding claims 13 and 31;** Hecht discloses wherein at least one of the plurality of audio element tracks is played using at least one randomized parameter, the parameters including at least one of volume, panning, reverb, equalization, compression, distortion, flange, and phase parameters, (¶ [0005]).

**19. Regarding claims 14 and 32;** Hecht discloses wherein the audio element phrases are sorted into at least two subgroups, (¶ [0048]).

**20. Regarding claims 15 and 33;** Hecht discloses wherein the audio elements in the phrase subgroups are grouped by compatibility with other audio element phrase groups, (¶ [0048]).

**21. Regarding claims 16 and 34;** Hecht discloses wherein the audio element tracks have different sampling rates, (¶ [0005]).

**22. Regarding claims 17 and 35;** Hecht discloses wherein at least one of the audio element tracks comprises music, (¶ [0038]).

**23. Regarding claims 18 and 36;** Hecht discloses wherein at least one of the audio element tracks comprises sound effects, (¶ [0038]).

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**24. Examiner's Note:** Examiner has cited paragraphs and figures in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

### ***Conclusion***

**25.** Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **FRANK M. LEIVA** whose telephone number is (571)272-2460. The examiner can normally be reached on M-Th 9:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter D. Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FML

12/18/2008

/Scott E. Jones/

Primary Examiner, Art Unit 3714